

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ARCH CAPITOL DISTRICT, INC.

For facilities in the Public
Land Mobile Service for
station KPD955 at:

Olean, New York	File No. 28160-CD-P/ML-01-90
Ripley, New York	File No. 27175-CD-P/ML-01-90
Little Valley, New York	File No. 27522-CD-P/ML-01-90
Arkwright, New York	File No. 27521-CD-P/ML-01-90
Erie, Pennsylvania	File No. 27510-CD-P/ML-01-90

ORDER ON RECONSIDERATION

Adopted: January 23, 1992; Released: January 29, 1992

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. The Mobile Services Division (MSD) granted the five captioned applications of Arch Capitol District, Inc. (Arch) for additional facilities in the Public Land Mobile Service (PLMS). See Public Notice Report No. PMS-91-30A (released April 24, 1991); Public Notice Report No. PMS-91-33A (released May 15, 1991). Professional Communications, Inc. (Professional) has filed a petition for reconsideration of that grant, arguing that two of the granted Arch facilities will cause electrical interference to a station proposed by Professional. Professional further argues that all of the captioned applications should be included in a lottery. For the reasons stated below, Professional's petition is dismissed.

II. BACKGROUND

2. On July 9, 1990, Professional filed an application for authority to change its operating frequency for Station KNKD991 at Warren, Pennsylvania from 152.09 MHz to 454.450 MHz. On July 30, 1990, Arch filed a mutually exclusive application for authority to construct a new PLMS facility to operate on 454.450 MHz at Jamestown, New York. See Public Notice Report No. PMS-91-34 (released May 22, 1991). These applications are mutually exclusive and will be scheduled for lottery pursuant to Section 22.33(a) of the Commission's rules.

3. Arch subsequently filed the five captioned applications for additional 454.450 MHz facilities at Little Valley, Olean, Ripley and Arkwright, New York, and Erie, Pennsylvania.¹ All of these applications purported to show non-interference with respect to Professional's Warren proposal. No petitions to deny were filed against the captioned applications.

4. By letter dated March 4, 1991, the MSD asked Arch to submit further engineering studies demonstrating non-interference with respect to Professional's Warren proposal. On April 2, 1991, Arch filed minor amendments to the five captioned applications. These amendments reduced the power of the proposed facilities and included further interference studies indicating that the proposed facilities would protect the Warren proposal from interference. The MSD granted the applications, as amended.

III. DISCUSSION

5. Professional in its petition objects to the engineering methodology used by Arch in its April 2, 1991 amendments demonstrating interference free operation and argues that the Little Valley and Olean facilities will cause electrical interference to Professional's Warren proposal. Professional also argues that the five captioned applications are in the same general geographic area as the Jamestown proposal, that some have overlapping service contours with the Jamestown proposal and that the captioned applications are unnecessary applications filed merely to "circumvent" the lottery process. Professional contends that, pursuant to the consolidation policy stated in *T-Comm, Inc.*, Mimeo No. 2727 (released February 22, 1985), the captioned applications should be consolidated with the Jamestown application and included in the lottery. Professional further argues that it could not submit its arguments earlier because it was unaware of the MSD's March 4, 1991 letter requesting additional information and of the minor amendments filed by Arch.

6. Section 1.106(b) of the rules provides that a petition for reconsideration filed by a non-party must show good reason why it was not possible to participate earlier. We find Professional's argument that it could not submit its arguments earlier unpersuasive. Professional had an obligation to examine the captioned applications during the thirty day period provided by Section 22.30 of the rules, and to raise any interference or other arguments that could be raised in a timely filed petition to deny. It did not do so. Although Professional's petition questions the interference potential of the proposed facilities as amended on April 2, 1991, we note that the Arch amendments reduced power for the proposed facilities, and thus did not create any new interference problems with respect to the original applications. We conclude that Professional could have raised its interference and consolidation arguments in a petition to deny filed in response to the originally filed applications and has failed to show good cause why it did not do so. Its petition is therefore procedurally defective.

7. Even if Professional's petition was not procedurally defective, its substantive arguments are without merit. First, Arch has responded to the interference arguments raised by Professional. On October 1, 1991, Arch filed two FCC Forms 489 further reducing power for the Little Valley and Olean facilities. Arch also submitted additional interference studies which take into account the engineering objections raised by Professional in its petition and which show that the Little Valley and Olean facilities, as modified, will not cause electrical interference to Professional's Warren station. Professional was served with Arch's October 1, 1991 filings and has raised no objection. Accordingly, we find that the public interest does

not require further consideration of the interference arguments raised in Professional's post-grant petition. See Section 1.106(c)(2) of the rules.

8. Second, in the *T-Comm* decision, we stated our policy of consolidating mutually exclusive locations for purposes of a lottery to prevent applicants from applying for additional locations solely to increase their chances of winning. In *T-Comm*, each of the consolidated locations was mutually exclusive with the single location requested by another carrier, and thus would be included in the lottery. The question in the case was whether T-Comm would be allowed to enter the locations in the lottery separately, and thus receive multiple chances as against the opposing carrier's single application, or whether the locations should be included in the lottery in a consolidated posture. However, the captioned Arch applications are not mutually exclusive with the Warren application and therefore *T-Comm* does not apply, and the applications do not need to be included in the lottery.² Professional's argument is therefore without merit.

IV. CONCLUSION

9. Professional's petition is procedurally defective because it fails to meet the requirements of Section 1.106(b) of the rules. Additionally, Professional's substantive arguments are without merit. Accordingly, its petition for reconsideration is, therefore, dismissed.

V. ORDERING PARAGRAPHS

10. For the foregoing reasons, IT IS ORDERED that the petition for reconsideration filed by Professional Communications, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

¹ These applications were filed within sixty days of the date of the public notice listing the Warren application as accepted for filing. See Section 22.31(b) of the rules.

² Professional also argues that the captioned applications should be consolidated with the Jamestown application for purposes of the lottery, because they are unnecessary encircling applications filed merely to "circumvent" the lottery process. However, Arch responds that it filed the captioned applications because it seeks to meet a *bona fide* need of subscribers in these areas, regardless of whether or not the Jamestown authorization is granted, and Professional has provided no evidence to the contrary. Accordingly, Professional's argument is rejected.